

CITY COUNCIL MINUTES

July 9, 2007

REGULAR SESSION

The Regular Session of the Auburn City Council was held in the Council Chambers, City Hall, 1225 Lincoln Way, Auburn, California on Monday, July 9 2007 at 6:00 p.m. with Mayor Robert Snyder presiding and City Clerk Joseph G.R. Labrie recording the minutes.

CALL TO ORDER

ROLL CALL

Council Members Present: Kevin Hanley, Keith Nesbitt (arrived immediately after roll call), Bridgett Powers, Bob Snyder, J. M. Holmes

Council Members Absent: None

Staff Members Present: City Manager Robert Richardson, Acting City Attorney Bill Carnazzo, Community Development Director Will Wong, Fire Chief Mark D'Ambrogi, Public Works Director Jack Warren, Engineering Division Manager Bernie Schroeder, Transit Analyst Megan Siren

By **MOTION** adjourn to a closed session under Government Code Section 54957.6: **MOTION: Holmes/Powers/Approved by voice**

- (1) Pursuant to Government Code Section 54957.6:
CONFERENCE WITH LABOR NEGOTIATORS
Agency Designated Representatives: David Mackowiak, Robert Richardson

Employee Organization: Police Officers Association

- (2) Pursuant to Government Code Section 54956.9(b)
CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION
A point has been reached where, in the opinion of the City Council on the advice of its legal counsel, based on the below-described existing fact and circumstances, there is a significant exposure to litigation against the City Council/Agency.

Receipt of Claim pursuant to Tort Claims Act or other written communication from Brad Booth threatening litigation (copy available for public inspection in the City Clerk's office). G.C. 54956.9v(3) (C).

REPORT OUT OF CLOSED SESSION

No reportable action.

PLEDGE OF ALLEGIANCE

AGENDA APPROVAL

Bill Kirby, 12501 Marcellas Court, Auburn, stated that he would like to permanently remove Item #9.

Mayor Snyder advised that Item 9 would be left on the agenda.

CONSENT CALENDAR

1. **Auburn Park Preserve Phase 2, Amendment No. 8**

By **RESOLUTION 07-78** authorize the Director of Public Works to execute Amendment No. 8 to compensate Royston, Hanamoto, Abbey and Alley for services provided for the Auburn Park Preserve Phase 2 in an amount not to exceed \$30,000.

***** End of Consent Calendar *****

By **MOTION** approve the Consent Calendar. **MOTION: Hanley/Holmes/**
Approved 5:0

2. **Public Comment**

Rosemary Frieborn, Placer County Animal Shelter, provided an update on animal services and budget constraints.

Council Members Holmes thanked the Regional Lions Clubs for organizing the 4th of July Parade. He commended the membership for its community service.

Council Member Nesbitt commended the members of the City's Fire Department that assisted in the Angora Fire in South Lake Tahoe. Chief D'Ambrogi advised the three firefighters were Cory Zander, Lucas Rogers and John Rogers.

PUBLIC HEARING

3. **Weed Abatement Public Protest Hearing**

Fire Chief Mark D'Ambrogi introduced the item. He said the parcels were noticed four times, and if Council gave its permission to abate, one more notice would be sent to the property owner prior to abatement. He advised that there were two steps involved in the action:

Mayor Snyder asked if there was a way to get the weed abatement underway earlier in the year. Chief D'Ambrogi advised that there may be a way, but he needs to speak with the City Attorney before making any suggestions.

Council Member Nesbitt asked if the properties were continually inspected. Chief D'Ambrogi stated that the department tries to do so, and deals with 300 to 400 parcels a year. However, he said when there are late rains, a second phase inspection plan has to be introduced.

Mayor Snyder opened the Public Hearing.

Norm Johnson, 11853 Mt. Vernon Road, Auburn, stated that a piece of property next to him is a fire hazard and it belongs to the City. He asked that someone from the City take a look at it. Mayor Snyder referred it to staff to resolve the issue as it is an ongoing annual problem.

By **RESOLUTION 07-79** authorize the Fire Chief to abate those properties that have been posted and notified as a public nuisance, and have not complied with "Notices to Remove." **MOTION:**
Holmes/Powers/Approved 5:0

4. **2007/08 Sewer Assessment to be Placed on Placer County Tax Roll**

Public Works Director Jack Warren introduced the item. He stated that he wanted it clear that the item under discussion had nothing to do with setting rates for monthly service or connection fees. He advised that it simply allows payment via the County tax rolls.

Mayor Snyder opened the public hearing to authorize the 2007/08 Fiscal Year sewer service charges placement on the County of Placer Tax Roll.

Carl Franklin, 12174 Lakeshore, South Auburn, referred to the sewer hook-up fees recommended by staff at the last Council Meeting. He said his project has been in the system for eighteen months and held up by the City. Therefore, he felt he should not pay the higher fee and asked for Council consideration. He said he was willing to prepay the current fees.

Mayor Snyder directed staff to look into the fees of Mr. Franklin and all the people already in the system, and try to come up with something

equitable. He then asked that the item be brought back to the City Council.

By **RESOLUTION 07-80** authorize the levy of sewer service charges for Fiscal Year 2007-2008 to be placed on the County of Placer Tax Roll.

MOTION: Nesbitt/Hanley/Approved 5:0

5. **Appeal by Michael E. Walker, Applicant, of the Planning Commission's Denial of a Tentative Parcel Map and Tree Permit – 230 Live Oak Street**

Mayor Snyder announced the item and asked all those in attendance for the appeal, who wanted to speak, to take a seat in the front row.

Associate Planner Steve Geiger introduced the item, explaining that the item had been heard by the Planning Commission on March 6, 2007 and on March 20, 2007. He explained the applicant has proposed the subdivision of one parcel into three parcels. He said the applicant has also submitted a tree permit application which includes saving protected trees. He outlined property access, on-site parking and fire department turn-around space. Mr. Geiger advised that at the Planning Commission meeting neighboring property owners spoke in opposition to the project, and explained their concerns.

Property Owner Concerns were:

Narrow existing width of Andrew and Live Oak Streets;
Limitation of on-street parking to only one side of Live Oak Street;
Concerns about existing sewer system;
Drainage issues;
Density of the proposed project related to the existing neighborhood;
Overall condition of the existing infrastructure.

After listening to the neighboring property owners, the Planning Commission denied approval of the subdivision and the tree permit. He said staff had recommended approval of the applications. The applications were reviewed by the Police, Fire and Public Works Departments and no concerns were identified.

Acting City Attorney Bill Carnazzo advised that, at the staff's request, he reviewed all related materials, and the Planning Commission Resolution does not comply with the law. If a project is to be denied regarding infill housing within the City based on density, there must be two findings set forth (Section 65589.5 of the Government Code, Subsection 1 and 2) in the resolution. Both findings must be set forth by the denying body and there is not sufficient evidence in the records to make those two findings. He stated that the resolution adopted by the Planning Commission does

not contain the required findings. He explained the options available to the Council.

Council Member Hanley stated that it was his understanding that the R1-7 zoning allowed for lot splits and increased density. Mr. Geiger explained what R1-7 zoning entailed. Discussion followed with Community Development Director Wong.

Mayor Snyder asked if the City has written Public Health and Safety Standards. Attorney Carnazzo explained that the City does have applicable standards. Discussion followed with Community Development Director Wong.

Michael Walker, property owner at 230 Live Oak Street, stated that he has been a licensed real estate broker since 1967 and teaches real estate classes at Sierra College. He stated that he and his wife are Auburn residents and not developers. He said in his written appeal he stated why he felt the denial was improper. He said his proposed minor land division is a typical infill project. He said the previous land owner, Lynn Newhall, had also planned to split the property. He advised that prior to purchasing the property he checked on the feasibility of splitting the property and spoke with the Auburn Planning Department, Auburn Fire Chief and Placer County Water Agency. He said in all of his investigations, he received no negative responses.

Mr. Walker said his project would create two lots behind an existing Victorian house, built in 1919. The property has quick access to Highway 80 and is within walking distance of Old Town. He said his project would be to build two cottage-style houses behind the existing property, which would not be visible from Live Oak Street. He stated there would be ample parking on the parcels. He provided Council with a Power-Point presentation.

Monti Reynolds, attorney representing Mike and Susie Walker, stated that this is a classic case of infill development. He reiterated that it is an ideal location for the homes and that all the agencies previously mentioned by Mr. Walker did not find any problems with the proposed development. He asked that the Council listen to the facts in evidence to which the law and planning policy can be applied.

The Council agreed that the public should be heard before members commented on the appeal.

Those in attendance opposed to the lot split were:

(Those who opposed the project reiterated issues of narrow streets, sewer, drainage, traffic safety, fire issues, density of development, and inconsistency with the General Plan.)

Larry Alberts, 226 Live Oak Street, adjacent to the proposed lot split, stated his opposition and provided a list of others who also opposed the project;

Karen Orth, 300 Oakview Court, located at the bottom of the property to be divided;

Denise Yeager, 218 Live Oak Street;

Judy Alberts, 226 Live Oak Street, spoke for Christine and Zack Scholtz who were unable to attend the meeting;

James Vessely, 206 Live Oak Street;

Craig Yeager, 218 Live Oak Street;

George Merrill, 294 Oakview Court;

Mike Moore, 222 Live Oak Street.

Those in attendance in support of the lot split were:

Jack and Valerie Sanchez, neighbors to the Walkers, stated their belief in private property rights and supported approval of the Walker appeal.

Lynn Newhall, prior resident of 230 Live Oak Street, urged approval.

Sue Thompson, Auburn property owner, stated the project met the zoning laws and should be accepted.

Gary Mandolfo favored the project.

Bill Kirby said the reality is that in the future there will be much smaller lots and favored the project.

Dave Kerr, 12521 Montalvo Court, favored project approval.

Dave Hungerford, supported project approval.

Attorney for Applicant, Monti Reynolds, rebutted some of the statements made regarding parking, road issues, traffic, sewage, fire protection, and trees.

Fred Yaeger responded to Mr. Reynolds, and stated the infrastructure cannot support new development and asked for denial of the appeal.

Mayor Snyder closed the public hearing and asked for Council comments and discussion.

Council Member Powers directed some questions to Fire Chief D'Ambrogi. He explained that the Fire Safe Standards, adopted in 2004, is the basis for fire department acceptance or rejection. He stated that this project meets all the minimum fire safety standards. Ms. Powers also questioned the status of the sewer. Public Works Director Warren stated that when the project was proposed, nothing was brought to his attention regarding the sewer or drainage. Therefore, Public Works is not aware of any problems with either. He said that if a city sewer main crossing the property was in need of repair, the lot owner would be asked to repair it. He further stated that sewer lateral construction to serve the new development be built to current city standards. Ms. Powers asked Mr. Warren to pay close attention to any drainage issues that could occur.

Council Member Hanley stated that denial would not be in accordance with state law. He said all conditions have been met by the applicant. He said neighboring property has been divided in the same manner as requested by the applicant. He said the Council has an obligation to treat all property owners equally. Mr. Hanley stated his support of Mr. Walker's appeal.

Council Member Holmes stated that he is a firm believer in private property rights. He advised that after listening to all testimony, the property meets all legal requirements. He said the parcel maps from 1907 show that all those parcels have been split to many units over the course of the last one hundred years. He advised that he supported Mr. Walker's appeal.

Council Member Nesbitt stated that he has visited the site and met with both opponents and proponents. He addressed each area of concern. He asked if splitting the lots into two instead of three was a possibility. He also suggested that the driveway might be reconfigured so it will not be right against the neighboring house. Mr. Nesbitt said that if compromise was not an option, there really is no legal way to deny the appeal.

Mayor Snyder stated that he lives in a neighborhood similar to the Live Oak area with limited access and a mix of lot sizes. He stated that drivers are more cautious. He suggested that residents get together and purchase development opportunities to avoid this issue in the future. He said that it is possible that there will be another access from Blocker Drive

that would alleviate some of the congestion. He advised that he would support the Walker appeal.

Council Member Holmes stated that it is his hope that when proposals come in for construction, staff takes into consideration some of the mitigating factors. Council Member Hanley stated that the drainage issue needs to be watched carefully. Mayor Snyder suggested the condition of the possibility of alternative pavement services near the neighbor's tree on the 20' driveway. Council Member Nesbitt suggested that maybe a raised foundation would have less impact on the property. Mayor Snyder stated that each issue must be considered separately.

Council Member Hanley stated that an additional condition need not be stipulated, but that the drainage issue should be watched carefully.

Council Member Powers suggested a fence be placed between the adjacent house beside the property driveway. Mr. Nesbitt stated a "meandering driveway" away from the property line may be beneficial. Community Development Director stated the condition for stem wall construction already exists. He said, "If you get into a meandering driveway," problems occur with vehicles, fire trucks and it will change the property line for parcel two. He advised the Council Members that if they want a fence or a landscaped area, they must be very specific.

By **RESOLUTION 07-81** approve the appeal of Michael E. Walker of the Planning Commission's denial of the Tentative Parcel Map and Tree Permit at 230 Live Oak Street (Files #LS 06-2, TP 06-5). **MOTION:**
Hanley/Holmes/Approved 5:0

By **MOTION** require a wood fence along the south property line, along parcel one, adjacent to the driveway and the south property line, 6' maximum height, 3' within the front yard setback, increase the proposed road access from 20' to 23' for the width of the house, and there will be a 3' landscape buffer, limited to the portion that is adjacent to the house.

MOTION: Nesbitt/Holmes/Approved 5:0

Mayor Snyder asked the applicant for his comments. Applicant advised that he accepted the requirements.

REPORTS

6. Reports from Committees/Commissions/Boards

Postponed to next City Council meeting.

7. Informational Reports from Staff

Postponed to follow Item 10

8. **City Council Committee Reports**

Postponed to follow Item 10

COUNCIL BUSINESS

9. **Eminent Domain Program for Auburn Redevelopment Project
Amendment Area- 1st Reading**

Mayor Snyder stated that the extension of the redevelopment area was previously approved. He said Council agreed to further discuss the limits of eminent domain. He advised that the Council will direct the Redevelopment Agency as to its limits of eminent domain, particularly regarding the taking of private property and passing it on to another private entity.

Mayor Snyder said that at the last meeting Council Member Nesbitt was absent. Therefore, the discussion and vote was postponed until all Council Member were present. He stated that he anticipated a split vote, although the Council Members have not spoken among themselves. He asked the audience by a show of hands to indicate opposition to the use of eminent domain. The vast majority of those present showed opposition to eminent domain. Since hours of public testimony have been given by the public at prior meetings, the Mayor suggested minimizing comments and avoiding repetition if possible.

Those opposed to eminent domain and specifically the acquisition from a private party and transferred to another private entity were:

Bill Kirby, 12501 Marcellas Court;
Harvey Eisley, 12450 Lees Drive;
Ray Thompson III, Placer Street;
Richard Boundy, retired USDA Supervisor;
Carmen Armstrong, Colfax resident;
Robert Boughton, 1201 Granite Lane;
Earl Eisley, 380 Nevada Street, presented the Council with 150 additional letters of people opposed to eminent domain;
Earlene Eisley Freeman, 128 Palm Avenue, stated her concern for the future planning of her business, Eisley's Nursery, and not knowing what will happen for the next twelve years.
Dan Sokol, 1330 Deerwood Place;
Norm Johnson, 11853 Mt. Vernon Road;

Mr. Boughton, Auburn lifetime resident;
Richard Sanborn, Auburn resident;
Joyce Chelonis, community worker;

City Clerk Joe Labrie stated that the City Clerk's Office received numerous letters regarding the Eislely's property. He said the City has no intention of taking that property, but if the people do not trust the government, they must accept the responsibility themselves. He advised that a ballot measure could be utilized and that the Registrar of Voters will provide all the information they may need to get it underway.

Mayor Snyder, in answer to a question, advised that private homes were not included in eminent domain because they were considered to be more sacred than a business. Harvey Eislely argued that it was because there are more homeowners to vote for candidates than there are business owners.

Council Member Nesbitt stated that he made it a point to talk with people with many interests, concerns, organizational and political affiliations. He said he found that probably ninety percent of those people did not want eminent domain in the redevelopment area. He said, based on what he learned from the people, he will vote to eliminate eminent domain.

Council Member Hanley stated that issues should be open to respectful public discussion. He said to condemn and be rude to "the people that work for us" is not appropriate. He explained that the expansion of the redevelopment area will provide a great deal of money to benefit the City's infrastructure. He advised that the question before the Council is the use of eminent domain in the 400 acres in the Highway 49/Nevada Street corridor. He stated that he feared the favoritism that can occur with eminent domain, as to what entity can provide the greater sales tax, the most popular businesses or the most influential business owners.

Council Member Powers recognized the audience and the statements made by the speakers. She thanked the City Manager for all he has done for the City. Ms. Powers stated that she was going to vote for the elimination of eminent domain from the redevelopment area.

Council Member Holmes stated that he favored the ordinance as presented, eliminating eminent domain.

Mayor Snyder commended the City Manager's performance, stating that it has always been in the best interest of Auburn. The Mayor stated that he has shifted his position on eminent domain due to the outpouring of community concern. He stated that after listening to Earlene Eislely Freeman he recognized her fear with regard to eminent domain.

By **MOTION** waive full reading and introduce an **ORDINANCE** containing a description of the Auburn Urban Development Authority's policy regarding acquisition of real property by eminent domain in the Auburn Redevelopment Project Amendment Area. **MOTION:**

Hanley/Holmes/Approved 5:0

Mayor Snyder stated that this action amended the existing eminent domain rights, eliminating it from the ordinance.

10. **Eminent Domain Program for Auburn Redevelopment Project (Original Project Area) – 1st Reading**

By **MOTION** waive full reading and introduce an **ORDINANCE** containing a description of the Auburn Urban Development Authority's Program to acquire real property by eminent domain in the Auburn Redevelopment Project (the Original Project Area). **MOTION: Nesbitt/Hanley/Approved 5:0**

7. **Informational Reports from Staff**

Public Works Director Jack Warren provided the Council with a quarterly report. He explained and discussed various projects with the Council:

Vintage Oaks Lift Station
WWTP Regionalization Project
WWTP Improvement Plan
Paving Projects
Palm Avenue Sidewalks
2006-07 Street Overlay Project, Phase II
2007-08 Street Overlay Project, Phase I
Downtown Storm Drain (Auburn Journal)
CNG Fueling Facility
Boys & Girls Club – E.V. Cain Project
Auburn School Park Preserve Project
Sewer Rate Study-Connection Fee
Sidewalk Repairs
East Area Hangar Project
Multi-Modal Lights.

8. **City Council Committee Reports**

Mayor Snyder reported on the meeting of the Auburn Aviation Association, explaining that the Council is always invited to attend the meetings.

ADJOURNMENT

Mayor Snyder, without objection, adjourned the meeting at 10:22 p.m.

Robert Snyder, Mayor

Joseph G. R. Labrie, City Clerk